STORAASLI *v.* MINNESOTA.

APPEAL FROM THE SUPREME COURT OF MINNESOTA.

No. 393. Submitted February 25, 1931.—Decided March 23, 1931.

1. When the question is involved in a claim of right under the Federal Constitution, this Court must decide for itself whether a state tax is a property or a privilege tax. P. 62.
2. A Minnesota statute requiring registration of motor vehicles, display of number plates, etc., provides that the vehicles shall be privileged to use the public streets and highways upon payment of specified annual rates, which are in lieu of all other taxes thereon except wheelage taxes by municipalities, and which are measured generally by cost of vehicle less allowance for depreciation, a minimum, however, being fixed for cars of certain weights. *Held* that the tax is a privilege tax. P. 62.
3. As applied to an army officer, claiming to be a nonresident of the State, who resides on a federal military reservation in Minnesota and has registered his car and acquired a license and license plates therefor under and pursuant to regulations enforced on the reservation by its commandant, the tax does not violate the equal protection clause either (a) because the statute exempts residents from payment of property taxes on their cars or (b) because it allows residents of other States or countries, whose cars have been registered at home and bear the home license plates, to operate them on Minnesota highways for a time without paying the tax. P. 62.

180 Minn. 241; 230 N. W. 572, affirmed.

APPEAL from a judgment sustaining a motor vehicle tax. The proceeding was begun by a notice of the tax with demand for payment. Judgment was entered on this and the taxpayer's answer.

Messrs. Charles Bunn and *Pierce Butler, Jr.*, were on the brief for appellant.

The automobile in question is not subject to be taxed as property, yet the tax is a property tax. *St. Louis S. W. Ry.* v. *Arkansas*, 235 U. S. 350; *St. Louis Cotton Compress Co.* v. *Arkansas*, 260 U. S. 346; *Quaker City Cab Co.* v.

Pennsylvania, 277 U. S. 389; *Hanover Ins. Co.* v. *Harding,* 272 U. S. 494; *Surplus Trading Co.* v. *Cook,* 281 U. S. 647; *Ft. Leavenworth R. Co.* v. *Lowe,* 114 U. S. 525; *Arlington Hotel Co.* v. *Fant,* 278 U. S. 439. Distinguishing: *Hendrick* v. *Maryland,* 235 U. S. 610; *Kane* v. *New Jersey,* 242 U. S. 160.

Even regarded as a privilege tax, the tax denies to the appellant the equal protection of the laws by imposing on him a greater burden than is imposed on residents of Minnesota. *Walling* v. *Michigan,* 116 U. S. 446; *Travis* v. *Yale & Towne Mfg. Co.,* 252 U. S. 60; *Bethlehem Motors Corp.* v. *Flynt,* 256 U. S. 421; *Hanover Ins. Co.* v. *Harding,* 272 U. S. 494; *Terral* v. *Burke Const. Co.,* 257 U. S. 529.

It is well settled by the state decisions that as to residents this tax is in part at least a property tax. *State* v. *Peterson,* 159 Minn. 269; *State* v. *Oligney,* 162 Minn. 302; *Raymond* v. *Holm,* 165 Minn. 215; *American Ry. Ex. Co.* v. *Holm,* 173 Minn. 72.

Regarded as a privilege tax, it denies to appellant the equal protection of the laws by imposing on him a greater burden than is imposed on residents of neighboring States. A resident of the Reservation who so much as runs his car across the boundary line into Minnesota and back again must pay the total tax. The discrimination against appellant is clear and is not justified by differences of fact. *Hendrick* v. *Maryland,* 235 U. S. 610; *Kane* v. *New Jersey,* 242 U. S. 160; *Royster Guano Co.* v. *Virginia,* 253 U. S. 412; *Kansas City So. Ry.* v. *Road Imp. Dist.,* 256 U. S. 658; *Air Way Corp.* v. *Day,* 266 U. S. 71; *Hopkins* v. *Southern Cal. Tel. Co.,* 275 U. S. 393; *Louisville Gas Co.* v. *Coleman,* 277 U. S. 32; *Quaker City Cab Co.* v. *Pennsylvania,* 277 U. S. 389.

Messrs. Henry N. Benson, Attorney General of Minnesota, *James E. Markham,* Deputy Attorney General, and *W. K. Montague,* Assistant Attorney General, were on the brief for appellee.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

By chapter 57 of the General Laws of Minnesota of 1889, that State ceded to the United States jurisdiction of the territory constituting the Fort Snelling Military Reservation, which lies entirely within the boundaries of Minnesota, immediately adjacent to the city limits of Minneapolis and St. Paul. Its greatest length from north to south is three and three-quarters miles, and from east to west two miles. The cession was upon condition that the public highways across the reservation be kept open for public traffic. Concurrent jurisdiction to serve process, civil and criminal, of the State, and to arrest persons charged with offenses against the laws of the State, was retained. There was no other limitation.

The reservation is occupied by the military forces of the United States, and, save as above noted, jurisdiction therein is exercised by the Federal Government to the exclusion of the State.

The Constitution of Minnesota provides[1] that a member of the military forces of the United States shall not be deemed a resident of the State as a consequence of being stationed within its borders. It also grants[2] to the legislature power to tax motor vehicles using the public streets and highways of the State on a more onerous basis than other personal property, such tax to be in lieu of all other taxes thereon, except wheelage taxes, so called, which may be imposed by any borough, city or village. Any such law may, in the discretion of the legislature, provide for the exemption from taxation of any motor vehicle owned by a nonresident transiently or temporarily using the streets and highways of the State. The proceeds of such tax are to be paid into the Trunk Highway Sinking Fund.

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[1] Art. 7, § 4.

[2] Art. 16, § 3.

By virtue of this constitutional authority, the legislature enacted a law providing for the imposition of a motor vehicle registration tax.[3] Pursuant to the statute, the Secretary of State filed in the office of the clerk of the district court of Ramsey County a list of motor vehicles on which the tax and penalty for 1929 appeared delinquent. The appellant's automobile was included in the list. Appellant filed answer to the notice, denying that any tax or penalty was due the State; alleging that he was the sole owner of the vehicle, was a nonresident of the State of Minnesota, a member of the military forces of the United States quartered and resident upon the Fort Snelling Reservation, that the vehicle had not been operated for hire, nor been present within the jurisdiction of Minnesota upon its roads, highways or streets for any period of ten days, and was never operated thereon, except as a visitor for brief periods.

After averring that the reservation is solely under the control of the United States and that all governmental functions, including police power, traffic control, and maintenance of highways, are vested in and exercised by the commanding officer under the laws of the United States, to the total exclusion of control by the State, and that the reservation is no part of the State of Minnesota, the answer states that the commanding officer has created and maintains, pursuant to his powers, a complete system of automobile registration, with rules and regulations, and that the vehicle in question is duly registered under such laws and regulations and has license plates and a registration certificate issued by federal authority, which has at all times been carried. It asserts appellant's willingness and ability to comply with all the laws of Minnesota applicable to nonresidents who have occasion to use its roads and streets, and that he has so notified the state officials,

[3] Mason's Minn. Stat. 1927, §§ 2672–2704, incl., as amended S. L. 1929, c. 335.

and has complied with all the traffic laws and regulations of the State when operating upon its highways.

On appellee's motion, judgment was entered on the pleadings for the tax and penalty. Upon appeal, the Supreme Court of Minnesota affirmed the judgment.[4] The appellant brought the case to this Court, having at all stages in the courts below asserted rights under the Fourteenth Amendment, which were passed on and determined adversely to his contentions. He claims that the tax in question is a property tax, and that the State may not tax property located on the Fort Snelling Reservation. In the alternative he says, if the act levies a privilege tax, as applied to him, it deprives him of equal protection of the laws by imposing upon him a greater burden than that laid on residents of Minnesota, or residents of neighboring States.

The argument that the tax is one on property is founded on the fact that it is measured by the cost of the motor car (less certain annual allowances for depreciation), and that it is in lieu of all other taxes thereon except wheelage taxes levied by municipalities.[5] It is to be remarked, however, that a minimum tax is prescribed for cars of certain weights, irrespective of value; that the act levies the tax on vehicles "using the public streets or highways in the State"; and provides that they "shall be privileged to use the public streets and highways on the basis and at the rates for each calendar year as follows . . ."[6]

The state court held that "the tax is both a property tax and a privilege tax. It is a property tax in the sense that it exempts the vehicle licensed from other taxation as property. It is in lieu of other taxes. But it is equally clear that it is a privilege tax. . . . The character of a privilege tax extends to the whole of the tax."

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[4] 180 Minn. 241; 230 N. W. 572.

[5] Mason's Minn. Stat. 1927, § 2674.

[6] *Ibid.*

This Court, while bound by the state court's decision as to the meaning and application of the law, decides for itself the character of the tax, and whether as applied to the appellant it affects his constitutional rights. We think it plain that the levy is an excise for the privilege of using the highways.

It is denominated a privilege tax. The car cannot use the highways unless it is paid. The statute contains the usual provisions for registration, issuance and display of number plates, &c.[7] Residents of other States who desire to use the highways for more than the period specified in certain sections extending the privilege, must register their vehicles and pay the same tax as residents of Minnesota.[8] The claim that the State is attempting to tax appellant's property situate without its jurisdiction cannot be sustained.

Viewed as imposing a privilege tax, the statute is alleged to discriminate against appellant in favor of residents, because it exempts vehicles licensed under it from payment of property taxes. But the exemption is a proper and lawful one, and appellant cannot make out a discrimination against him from the mere fact that he is not in a position to claim it. Doubtless in the case of every taxing act which creates exemptions there are those who cannot bring themselves within the exempt class, but this does not deprive them of the equal protection of the law.

Finally, appellant says the act accords certain privileges to residents of neighboring States, which are denied to him, and hence the law operates unequally as against him. The section of the statute to which he refers provides that vehicles owned by nonresidents, properly registered in the country or State of the owner, and carrying license number plates of such State, are authorized to use Minnesota

[7] *Ibid.*, § 2675.

[8] Mason's Minn. Stat. 1927, § 2684.

highways for ten days without registration or tax, and upon making proper filing with the Registrar of Motor Vehicles within the ten-day period, are authorized to use the highways of the State for a total period of ninety days without any payment whatever.[9] Appellant says that, as he is a nonresident of Minnesota, has registered his car in the Fort Snelling Reservation, as required by the authorities thereof, carries license number plates issued by such authorities, and has offered to make proper filing in Minnesota, to refuse him the privilege accorded to other nonresidents deprives him of the equal protection of the law.

But, as was pointed out in *Kane* v. *New Jersey,* 242 U. S. 160, the absence of any such provision in favor of nonresidents, would not render the law discriminatory. A resident of the State who desires to operate his car for a single day is liable for the entire year's tax. If the State determines to extend a privilege to nonresidents, it may with propriety limit the concession to those who have duly registered their vehicles in another State or country. The mere fact that appellant has not so registered his car and cannot, therefore, bring himself within the class benefited by the exemption, does not create a discrimination against him. The State was not bound to make a classification with respect to exemptions for him and those similarly situated. Nothing said in *Hendrick* v. *Maryland,* 235 U. S. 610, establishes any such principle. Nor are the authorities which forbid a difference in the method of calculating the amount of the tax itself depending solely on the fact of residence within or without the State relevant to the issue in this case.[10] We

[9] *Ibid.*

[10] *Travis* v. *Yale & Towne Mfg. Co.,* 252 U. S. 60; *Bethlehem Motors Corp.* v. *Flynt,* 256 U. S. 421; *Hanover Fire Ins. Co.* v. *Harding,* 272 U. S. 494.

find no improper classification or discrimination. The judgment is

Affirmed.

MR. JUSTICE BUTLER took no part in the consideration or decision of this case.

UNITED STATES *v.* UTAH.

No. 14, original. Argued February 25, 26, 1931.—Decided April 13, 1931.

1. The United States sued the State of Utah to quiet title to land forming the beds of certain sections of the Colorado River and tributaries thereof within the State. Utah claimed title upon the ground that the streams, at the places in question, are navigable waters of the State. *Held:*

(1) In accordance with the constitutional principle of the equality of States, the title to the beds of rivers in Utah passed to that State when it was admitted to the Union, January 4, 1896, if the rivers were then navigable; and, if they were not then navigable, it remained in the United States. P. 75.

(2) The question of navigability is a federal question. *Id.*

(3) This is so, although it is undisputed that the portions of the rivers under consideration are not navigable waters of the United States, that is, they are not navigable in interstate or foreign commerce, and the question is whether they are navigable waters of the State of Utah. *Id.*

(4) In view of the physical characteristics of the rivers in question, findings and conclusions as to navigability are properly confined to the particular sections to which the controversy relates. P. 77.

(5) The crucial question—a question of fact—is whether these stretches of river in their ordinary condition and at the time of the admission of the State, were susceptible of use as highways of commerce. P. 82.

(6) To this question, evidence of actual navigation, after as well as before the admission of the State, is relevant. *Id.*

(7) But where the actual navigation of a stream has been infrequent and of limited nature, and this is explained by conditions